

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA No.7267/Del./2018
(ASSESSMENT YEAR : 2015-16)**

M/s. R R M Trading Co.,
5066, Roshanara Road,
Opp. Roshanara Bagh,
New Delhi – 110 007.

vs. ACIT, Circle 63 (1),
New Delhi.

(PAN : AAAGR4049J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Rakesh Jain, Advocate
REVENUE BY : Ms. Sangeeta Yadav, Senior DR

Date of Hearing : 02.03.2022
Date of Order : 02.03.2022

ORDER

PER AMIT SHUKLA, JM :

The aforesaid appeal has been filed by the assessee against the impugned order dated 31.08.2018 passed by the Id. CIT(A)-20, New Delhi for the quantum of assessment passed under section 143(3) of the Income-tax Act, 1961 (for short 'the Act') for the assessment year 2015-16.

2. The grounds of appeal raised by the assessee read as under :-

"1. That the learned Commissioner of Income tax appeals has erred in law as well as on facts of the case by confirming the disallowance of

Rs.825723/- in respect of interest paid u/s 40(A)(2)(a) of the Income Tax Act, 1961.

2. That it is prayed that addition of Rs.8,25,723/- made and sustained by the Learned Commissioner of Income tax (Appeals) may kindly be deleted and appeal of the appellant be allowed.”

3. The facts in brief are that the assessee is an individual engaged in the business of importing and distributing of shoes. During the course of assessment proceedings, Assessing Officer on perusal of the details relating to related party expenditure noted that assessee has paid interest to the related parties amounting to Rs.60,46,957/- as per the details given herein below :-

S.No.	Name of the related party	Rate	Amount
1.	A.K. Jain (HUF)	18%	13,92,014
2.	Rohit Jain (HUF)	18%	1,28,153
3.	Shikha Jain	18%	8,53,119
4.	Shruti Jain	18%	1,03,882
5.	Rohit Jain (Partners)	12%	6,58,397
6.	Monit Jain (Partners)	12%	8,53,028
7.	Raksha Jain (Partners)	12%	20,58,364

4. AO observed that, since assessee has paid interest to the partners of the firm @ 12%, whereas he has paid 18% to other related parties. Accordingly, he invoked the provisions of section 40A(2)(a) of the Act and held that interest payment of Rs.24,77,168/- paid @ 18% to four related parties as mentioned in the above table from sl.no.1 to 4 is restricted to 12%. The difference of interest of Rs.8,25,723/- was disallowed holding to be unreasonable and excessive payment.

5. Before the Id. CIT (A), the assessee's submission was that *firstly*, these were unsecured loans required for working capital and in case loan were to be taken from financial institutions/bank, then there are very strict norms and assessee has to give collateral security and

mortgage/hypothecate stocks etc; and *secondly*, AO has not proved that interest paid is excessive or unreasonable having regard to the fair market value. Another contention of the assessee was that the interest paid to these four related parties has been duly disclosed in their respective income-tax returns and in the case of two parties, they were in the bracket of tax rate of 30% and hence there is no evasion of tax. Ld. CIT (A) has confirmed the said addition after observing and holding as under:-

“6.4 During the course of appellate proceedings, the appellant was asked to give audited report which was produced and from this report of Form 3CD, it is gathered that the appellant has not disclosed this fact that these parties are related parties. In column 23 of Form 3CD under the head "particulars of payments made two persons specified under section 40A(2) (b)", the name of these persons to whom interest @18% has been paid, is not mentioned. This shows that even the Auditor has not seen whether these payments violate the provisions of section 40A(2)(a) or not and not commented upon in the audit report. Further, the market rate on which the loan is available with the Banks are not more than 12% during this period. This plea of the appellant that such loans are not easily available is not correct as Banks give loans and credit facilities to the businessman on very liberal grounds and any businessman will prefer to take overdraft facilities from the bank and replay it as per needs to minimize the interest burden. Whereas the facts of this case is that the appellant has taken loan from wife of the partners & other family members and did not repay it and the interest burden is rising year by year from Rs.17,80,627/- in AY. 2012-13 and Rs.20,72,360/- in AY. 2013-14 to Rs.24,77,168/- in AY. 2014-15 i.e. during the year under consideration showing no commercial expediency. Further, the plea of the appellant that this addition is tax neutral is also not correct as two persons are assessed to tax at lower slab rate and what expenses these persons have debited against such income has also not been produced by the appellant in support of this claim. Hence, the appellant could not discharged the onus that payment of high interest rate @18% to the related parties is for commercial expediency. Besides this, the facts and circumstances of the case laws relied upon by the appellant are entirely dif rent and do not apply on the facts and circumstances of the case of the appellant.”

6. After considering the rival submissions and on perusal of the relevant findings given in the impugned order as well as material referred to before us, we find that AO has restricted the payment of

interest to the related parties @ 18% to 12% on the ground that it is excessive and unreasonable looking to the fact that assessee has paid interest to the partners @ 12% which is in accordance with the Partnership deed. However, nowhere AO has tried to establish that having regard to the fair market value, such an interest payment is excessive or unreasonable without bringing any comparable instances that unsecured loan in the market are less. Apart from that, we agree with the submission of the Id. Counsel for the assessee that bank rates may be 12%, however such bank loans are subject to hypothecation of goods, collateral security, mortgage and guarantor and various other paper formalities. Since bank loans are secured loan, that is why it is always less than the unsecured loans in the open market. Without there being any adverse material on record that the interest rate paid by the assessee are not in consonance with the fair market value in the open market, we do not find any justification for making such disallowance because onus is on the AO u/s 40A(2)(a) with regard to interest paid to four related parties being excessive and unreasonable having regard to the fair market value in the open market. Accordingly, disallowance sustained by the Id. CIT (A) of Rs.8,25,723/- is deleted.

7. In the result, the appeal filed by the assessee is allowed.

Order was pronounced on 2nd day of March, 2022.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

Dated: 02.03.2022

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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-20, New Delhi.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.